

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 266, FOOD AND DRUGS ACT.

MISBRANDING OF A DRUG—"DR. JOHNSON'S MILD COMBINATION TREATMENT FOR CANCER."

On or about the thirteenth day of May, 1908, O. A. Johnson, doing business under the name of The Dr. Johnson Remedy Company, sold and shipped from Kansas City, Mo., to Washington, D. C., one package of "Cancerine Tablets," two packages of "Antiseptic Tablets," two packages or bottles of "Blood Purifier," one package or bottle of "Special No. 4," one package of "Cancerine No. 17," one package "Cancerine No. 1," all of which packages formed and constituted what was termed in substance "Dr. Johnson's mild combination treatment for Cancer." Samples from the above packages were procured and analyzed in the Bureau of Chemistry of the United States Department of Agriculture. The finding of the analyst and the report made indicated that the articles were misbranded within the meaning of the Food and Drugs Act. Said O. A. Johnson was afforded an opportunity for hearing and as it appeared after a hearing held that the above shipment was made in violation of the aforesaid act, the Secretary of Agriculture reported the facts to the Attorney-General, together with a statement of the evidence upon which to base a prosecution. In due course, after the above facts and evidence had been submitted by the United States Attorney for the Western District of Missouri to the Grand Jury sitting for said district, the following indictment was returned against the above named shipper:

UNITED STATES OF AMERICA,
Western Division, Western District of Missouri.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE
WESTERN DISTRICT OF MISSOURI.

The Grand Jurors of the United States of America, duly chosen, selected, empaneled, sworn and charged to inquire of and concerning crimes and offenses in the Western Division of the Western District of Missouri, upon their oaths present and charge: That on or about the 13th day of May, A. D. 1908, at Kansas City, Jackson County, Missouri, in said Division and District, one O. A. Johnson, whose christian name is to the Grand Jurors not more fully known, doing business under the name of Doctor Johnson Remedy Company, did then and there unlawfully, wilfully and knowingly

ship and deliver for shipment from one state of the United States, to wit, the State of Missouri, to the city of Washington, in the District of Columbia, a certain box containing certain unbroken packages of drugs as follows, to wit, one unbroken package called and denominated as to the contents thereof "Cancerine Tablets;" two unbroken packages called and denominated as to the contents thereof "Antiseptic Tablets;" two unbroken packages or bottles called and denominated as to the contents thereof "Blood Purifier;" one unbroken package or bottle called and denominated as to the contents thereof "Special No. 4;" one unbroken package, box or carton called and denominated as to the contents thereof "Cancerine No. 17;" one unbroken package, box or carton called and denominated as to the contents thereof "Cancerine No. 1;" all of which said packages formed and constituted what was termed in substance "Doctor Johnson's Mild Combination Treatment for Cancer," and all of which said packages, cartons, boxes and bottles were then and there misbranded within the meaning of the law, to wit, the Act approved June 30, 1906, entitled "An Act for preventing the manufacture, sale and transportation of adulterated or misbranded or poisonous or deleterious foods and drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes;" that said unbroken package, box or carton denominated as to the contents thereof "Cancerine Tablets," was then and there labeled and branded as follows, to wit, "Complies with the Food and Drug Act, June 30th, 1906. Cancerine Tablets. Take two tablets in water every three hours during the day. Do not take more than four doses in twenty-four hours. Prepared for and distributed by Dr. O. A. Johnson, 1233 Grand Ave., Kansas City, Mo.;" which said label and brand was then and there false and misleading in this to wit, that it bears thereon by the name, "cancerine tablets," a statement regarding such article and the substances contained therein, which is false and misleading in this particular; that it implies that said tablets labeled, cancerine tablets, as aforesaid, will cure and are effective in bringing about the cure of cancer, when in truth and in fact said article is wholly worthless and ineffective in bringing about the cure of cancer, as he, the said O. A. Johnson, then and there well knew, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

SECOND COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That the said O. A. Johnson, whose christian name is to the Grand Jurors not more fully known, on, to wit, the 13th day of May, A. D., 1908, at Kansas City, Jackson County, Missouri, in said Division and District, unlawfully, wilfully and knowingly did ship and deliver for shipment from one state of the United States, to wit, the State of Missouri, to the city of Washington, in the District of Columbia, as aforesaid, a certain unbroken package or bottle called and denominated as to the contents thereof, "Blood Purifier," as aforesaid, which said package and bottle was then and there misbranded within the meaning of the law, to wit, the Act approved June 30, 1906, entitled "An Act for preventing the manufacture, sale and transportation of adulterated or misbranded or poisonous or deleterious foods and drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes;" which said package and bottle was labeled as follows, to wit, "Guaranteed Under the Pure Food and Drugs Act, June 30, 1906. Serial No. 18131. Contains Not More Than 20 Per Cent Alcohol. Doctor Johnson's Mild Combination Treatment for Cancer. Blood Purifier. This is an effective Tonic and Alterative. It enters the circulation at once, utterly destroying and removing impurities from the blood and entire system. Acts on the Bowels, Kidneys and Skin, eliminating poisons from the system, and when taken in connection with the Mild Combination Treatment gives splendid results in the treatment of Cancer and other malignant diseases. I always advise that the Blood Purifier be continued some little time after the cancer has been killed and removed and the sore healed. Recommended in all conditions associated with

impure blood, poor digestion and non-assimilation of food; also poor circulation, weak heart, etc. Directions—Shake well. Take one teaspoonful in a little cold water before each meal, three times a day. Do not take in too large doses. The best results can be obtained only where it is taken as directed. Forty-five drops usually make a teaspoonful. Please count and see that your teaspoon is not too large. Prepared for and distributed by Doctor Johnson Remedy Company, 1233 Grand Avenue, Kansas City, Mo.," which said label was then and there false and misleading in the following particulars, to wit, that it bears the false and misleading statement that said drug is a part of the treatment for cancer; that it enters the circulation at once, utterly destroying and removing impurities from the blood and entire system; that when taken in connection with the mild combination treatment it gives splendid results in the treatment of cancer and other malignant diseases; that it is always advised that the blood purifier be continued some little time after the cancer has been killed and removed and the sore healed; whereby it is held out and falsely claimed that said drug is efficacious in the treatment of cancer and that the cancer thereby can be killed and removed and the sore healed; when in truth and in fact said drug contained in said packages so labeled is entirely worthless and without effect either in whole or part as a cure for cancer and for killing and removing cancer and in healing the cancer sore, as he, the said O. A. Johnson then and there well knew, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

THIRD COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That the said O. A. Johnson, whose christian name is to the Grand Jurors not more fully known, on, to wit, the 13th day of May, A. D., 1908, at Kansas City, Jackson County, Missouri, in said Division and District, unlawfully, wilfully and knowingly did ship and deliver for shipment from one state of the United States, to wit, the State of Missouri, to the city of Washington, in the District of Columbia, as aforesaid, a certain other unbroken package or bottle called and denominated as to the contents thereof, "Blood Purifier," as aforesaid, which said package and bottle was then and there misbranded within the meaning of the law, to wit, the Act approved June 30, 1906, entitled "An Act for preventing the manufacture, sale and transportation of adulterated or misbranded or poisonous or deleterious foods and drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes;" which said package and bottle was labeled as follows, to wit, "Guaranteed Under the Pure Food and Drugs Act, June 30, 1906. Serial No. 18131. Contains Not More Than 20 Per Cent Alcohol. Doctor Johnson's Mild Combination Treatment for Cancer. Blood Purifier. This is an effective Tonic and Alterative. It enters the circulation at once, utterly destroying and removing impurities from the blood and entire system. Acts on the Bowels, Kidneys and Skin, eliminating poisons from the system, and when taken in connection with the Mild Combination Treatment gives splendid results in the treatment of Cancer and other malignant diseases. I always advise that the Blood Purifier be continued some little time after the cancer has been killed and removed and the sore healed. Recommended in all conditions associated with impure blood, poor digestion and non-assimilation of food; also poor circulation, weak heart, etc. Directions—Shake Well. Take one teaspoonful in a little cold water before each meal, three times a day. Do not take in too large doses. The best results can be obtained only where it is taken as directed. Forty-five drops usually make a teaspoonful. Please count and see that your teaspoon is not too large. Prepared for and distributed by Doctor Johnson Remedy Company, 1233 Grand Avenue, Kansas City, Mo.," which said label was then and there false and misleading in the following particulars, to wit, that it bears the false and misleading statement that said drug is a part of the treatment for cancer; that it enters

the circulation at once, utterly destroying and removing impurities from the blood and entire system; that when take in connection with the mild combination treatment it gives splendid results in the treatment of cancer and other malignant diseases; that it is always advised that the blood purifier be continued some little time after the cancer has been killed and removed and the sore healed; whereby it is held out and falsely claimed that said drug is efficacious in the treatment of cancer and that the cancer thereby can be killed and removed and the sore healed; when in truth and in fact said drug contained in said packages so labeled is entirely worthless and without effect either in whole or in part as a cure for cancer and for killing and removing cancer and in healing the cancer sore, as he, the said O. A. Johnson then and there well knew, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

FOURTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That the said O. A. Johnson, whose christian name is to the Grand Jurors not more fully known, on, to wit, the 13th day of May, A. D., 1908, at Kansas City, Jackson County, Missouri, in said Division and District, unlawfully, wilfully and knowingly did ship and deliver for shipment from one state of the United States, to wit, the State of Missouri, to the city of Washington, in the District of Columbia, as aforesaid, a certain unbroken package or bottle called and denominated as to the contents thereof, "Special No. 4," as aforesaid, which said package and bottle was then and there misbranded within the meaning of the law, to wit, the Act approved June 30, 1906, entitled "An Act for preventing the manufacture, sale and transportation of adulterated or misbranded or poisonous or deleterious foods and drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes;" which said package and bottle was labeled as follows, to wit, "Complies With the Food and Drug Act, June 30th, 1906. Dr. Johnson's Mild Combination Treatment for Cancer. Special No. 4. Directions—This is to be used locally to all parts where the skin is not broken, but where there is swelling, soreness and pain. It is to be applied by rubbing in thoroughly with the fingers or hand once or twice daily, according to indications—taking about fifteen or twenty minutes in which to apply it, for the good coming from the use of this remedy depends fully as much upon the amount of rubbing done as upon the quantity used. It has a strong stimulative and absorptive power; will remove swelling, arrest development, restore circulation and remove pain. Is indicated in all cases of malignancy where there is a tendency of the disease to spread, and where there is considerable hardness surrounding the sore. Applied thoroughly to a lump or to an enlarged gland will cause it to soften, become smaller and be absorbed. If this Special No. 4 should cause irritation of the skin, such as a blister or pimples to form, then discontinue its use at once, and apply the Cancerine No. 1 to the irritated parts night and morning until the irritation is relieved, then take up again the use of this Special No. 4. Prepared for and Distributed by Dr. O. A. Johnson, 1233 Grand Avenue, Kansas City, Mo.;" the statements borne by which said label were false and misleading in these particulars, to wit, that said article will not in case of cancer remove swelling, arrest development, restore circulation and remove pain; that it will not in case of cancer when applied thoroughly to a lump or an enlarged gland cause it to soften, become smaller and be absorbed; that in case of cancer it is ineffective and is not indicated in all cases of malignancy where there is a tendency of the disease to spread; that the tendency of said label and the statement borne thereon is to lead to the belief that said drug will cure and tend to cure cancer in the manner indicated, when in truth and in fact it is entirely worthless and ineffective for the purposes stated in said label, as he, the said O. A. Johnson then and there well knew, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

FIFTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That the said O. A. Johnson, whose christian name is to the Grand Jurors not more fully known, on, to wit, the 13th day of May, A. D., 1908, at Kansas City, Jackson County, Missouri, in said Division and District, unlawfully, wilfully and knowingly did ship and deliver for shipment from one state of the United States, to wit, the State of Missouri, to the city of Washington, in the District of Columbia, as aforesaid, a certain unbroken package, box or carton called and denominated as to the contents thereof "Cancerine No. 17," which said package, box or carton was then and there misbranded within the meaning of the law, to wit, the Act approved June 30, 1906, entitled "An Act for preventing the manufacture, sale and transportation of adulterated or misbranded or poisonous or deleterious foods and drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes;" which said package, box or carton was labeled as follows, to wit, "Complies with the Pure Food and Drug Act, June 30th, 1906. Cancerine No. 17. Directions: Use during the night by spreading on the affected parts and cover with cotton or soft white cloth. Dr. Johnson Remedy Co., 1233 Grand Avenue, Kansas City, Mo.;" the statements borne by which said label were then and there false and misleading in the following particulars, to wit, that said drug is offered as a part of the treatment for cancer, and that the use of the name "Cancerine No. 17" implies, holds out and represents that said drug will cure and is effective in bringing about the cure of cancer, when in truth and in fact said article is wholly worthless and ineffective in bringing about the cure of cancer and in contributing to the cure of cancer, as he, the said O. A. Johnson then and there well knew, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

SIXTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That the said O. A. Johnson, whose christian name is to the Grand Jurors not more fully known, on, to wit, the 13th day of May, A. D., 1908, at Kansas City, Jackson County, Missouri, in said Division and District, unlawfully, wilfully and knowingly did ship and deliver for shipment from one state of the United States, to wit, the State of Missouri, to the city of Washington, in the District of Columbia, as aforesaid, a certain unbroken package, box or carton called and denominated as to the contents thereof "Cancerine No. 1," which said package, box or carton was then and there misbranded within the meaning of the law, to wit, the Act approved June 30, 1906, entitled "An Act for preventing the manufacture, sale and transportation of adulterated or misbranded or poisonous or deleterious foods and drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes;" which said package, box or carton was labeled as follows, to wit, "Complies with the Food and Drug Act, June 30th, 1906. Dr. Johnson's Mild Combination Treatment for Cancer, Tumor and Other Chronic Diseases. Cancerine No. 1. This is to be applied to the sore or cancer by spreading on a cloth cut the size of the sore after it has been thoroughly washed by the antiseptic. Tendency is to convert the sore from an unhealthy to a healthy condition and promote healing. Also it destroys and removes dead and unhealthy tissue. Prepared for and distributed by Dr. O. A. Johnson, 1233 Grand Ave., Kansas City, Mo.;" which said label and brand was then and there false and misleading in this, to wit, that it bears thereon by the name "Cancerine No. 1," and otherwise statements regarding such article and the substances contained therein, which are false and misleading in these particulars; that said drug is a part of the treatment for cancer; that said drug labeled "Cancerine No. 1," as aforesaid, will cure and is effective in bringing about the cure of cancer; that the tendency of said drug is to convert the sore from an unhealthy to a healthy condition and to promote

healing; also that it destroys and removes dead and unhealthy tissue; when in truth and in fact said article and drug is wholly worthless and ineffective in bringing about the cure of cancer or contributing thereto; that it has no tendency in the case of cancer to convert the sore from an unhealthy to a healthy condition and to promote healing, and, in case of cancer, does not destroy and does not remove the unhealthy cancerous tissue, as he, the said O. A. Johnson then and there well knew, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

A. S. VAN VALKENBURGH,
United States Attorney.

The defendant, through his attorneys, appeared and filed the following motion to quash said indictment, which motion is as follows:

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA, WESTERN DIVISION,
WESTERN DISTRICT, STATE OF MISSOURI.

UNITED STATES }
v. } No. 2795.
O. A. JOHNSON. }

MOTION TO QUASH.

Comes now the defendant O. A. Johnson and moves the court to quash each and every count in the indictment in the above entitled cause, for the reason, and because,

First. Each and all of the six counts of the indictment fail to state facts sufficient to constitute any crime or offense under the Act of Congress approved June 30, 1906, as in each of said counts claimed and charged.

Second. No facts are alleged or stated in any of the counts that come within or covered by the provisions of said Act of June 30, 1906, setting up and relied upon in said indictment.

HARKLESS AND HINSTEAD,
Attorneys for Defendant.

The motion having come on for a hearing, and having been argued by counsel for the respective parties, the Court rendered its judgment in substance and form as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF
THE WESTERN DISTRICT OF MISSOURI.

UNITED STATES, *Complainant,* }
vs. }
O. A. JOHNSON, *Defendant.* }

Opinion by PHILIPS, *District Judge.*

The defendant has filed motion to quash the indictment, for the principal reason that it does not disclose an indictable offense. It is predicated of what is known as the "Pure Food and Drug Act," entitled "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes." Approved June 30, 1906. It contains six counts. The first count, in substance, charges that the defendant shipped from one State to another certain articles designated as "Cancerine Tablets," "Antiseptic Tablets," "Blood Purifier," "Special No. 4," "Cancerine No. 17," "Cancerine No. 1," which constituted "Dr. Johnson's Mild Combination Treatment for Cancer." It charges that they were misbranded within the meaning of the Act aforesaid, in that the broken packages, etc. of "Cancerine Tablets" were labeled and branded as follows, to wit: "Complies with the Food

and Drug Act, June 30, 1906. Cancerine Tablets. Take two tablets in water every three hours during the day. Do not take more than four doses in twenty-four hours. Prepared for and distributed by Dr. O. A. Johnson, 1233 Grand Ave., Kansas City, Mo.;" which said label or brand is alleged to be false and misleading in that it bears the name "Cancerine Tablets," which statement, regarding such articles and substances contained therein, is false and misleading in that it implies that said tablets will cure, and are effective in bringing about the cure of cancer, which was untrue, and that they were worthless and ineffective for such purpose.

The second count is predicated of packages containing "Blood Purifier," which were misbranded within the meaning of said Act, in that they were labeled "Guaranteed under the Pure Food and Drug Act, June 30, 1906, Serial No. 18131. Contains not more than 20 percent Alcohol. Dr. Johnson's Mild Combination Treatment for Cancer. Blood Purifier. This is an effective Tonic and Alterative. It enters the circulation at once, utterly destroying and removing impurities from the blood and entire system. Acts on the Bowels, Kidneys and Skin, eliminating poisons from the system, and when taken in connection with the Mild Combination Treatment gives splendid results in the treatment of cancer and other malignant diseases." This was followed with directions how to take the remedy. The charge is then made that said label was false and misleading in that it bears false statement that said drug is a part of the treatment for cancer, etc., whereby it held out and falsely claimed that said drug is efficacious in the treatment of cancer, etc., when in truth and in fact the drug contained in said packages is worthless and ineffective for such purposes.

The third count is predicated of packages under the name of "Blood Purifier," and is in effect the same as the preceding shipment, only to a different party.

The fourth count is predicated of packages and bottles under the name of "Special No. 4" with the label "Dr. Johnson's Mild Combination Treatment for Cancer. Special No. 4," with directions as to how it was to be applied and used, and its effect. This label is charged to be false and misleading in that it would not accomplish the results stated.

The fifth count is predicated of shipments of boxes, etc. containing "Cancerine No. 17," with directions as to how the same should be applied and used. The indictment charges that these were false and misleading in that said drug was offered as part of the treatment for cancer, holding out and representing that said drug will cure, and is effective in bringing about the cure of cancer, when in fact and in truth it was not effective for such purpose.

The sixth count is predicated of a shipment of box or carton called "Cancerine No. 1," which is alleged to be misbranded within the meaning of the Act, in that the label contained the following: "Dr. Johnson's Mild Combination Treatment for Cancer, Tumor and Other Chronic Diseases. Cancerine No. 1," with directions as to how the same should be applied and used. Said label or brand is alleged to be false and misleading in that it bears thereon the name "Cancerine No. 1," statements regarding such articles and substances contained therein which are false and misleading, in that said drug was represented as part of the treatment for cancer, and that it would cure, and is effective in bringing about the cure of cancer, etc., when in truth and fact it is wholly worthless and ineffective for the purposes recommended.

From which it is apparent that no charge is preferred by the indictment that the drug or medicine was adulterated, or that it contained anything that was poisonous or deleterious, or that it contained less than what was represented; or that in any respect there was any misbranding as to the contents and composition thereof. The substantive charge is that the articles manufactured and shipped by the defendant are and were inefficacious in producing the cures and remedies indicated by the label. The question, therefore, to be decided is whether this presents an indictable offense within the provisions of the Pure Food and Drug Act.

The very title of the Act indicates its scope and purport. Its underlying purpose was to protect the public health against the imposition upon the users of food, drugs, and medicines which were adulterated, misbranded, poisonous, or deleterious. To this end, the first Section of the Act makes it unlawful and an indictable offense for any person to manufacture * * * any article of food or drug which is adulterated or misbranded, within the meaning of the Act.

The second Section forbids the introduction into any State, etc., or from any foreign country, or shipment to any foreign country, of any article of food or drug which is adulterated or misbranded within the meaning of the Act, etc.

The third Section directs that the Secretary of the Treasury, of Agriculture, and of Commerce and Labor, shall make uniform rules and regulations for carrying out the provisions of the Act.

The fourth Section declares that the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such Bureau, "for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act."

Section 5 declares the duty of District Attorneys, to whom the Secretary of Agriculture shall report any violation of this Act.

Section 6 declares that the term "drug," as used in the Act, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal and external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or animal.

Section 7 then specifies when an article shall be deemed to be adulterated: In case of drugs, if it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary; "Provided, that no drug defined in the United States Pharmacopœia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary;" or if its strength or purity fall below the standard under which it is sold; or any substance has been substituted wholly or in part for the article; or any valuable constituent of the article has been wholly or in part abstracted; or if it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed; or if it contain any added poisonous or other added deleterious ingredient which may render such articles injurious to health (with a certain provision); or if it consist in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, etc.

Section 8 is as follows:

"That the term 'Misbranded,' as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced."

It is conceded that the indictment is predicated of the words contained in the foregoing section 8, "the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular." In other words, the contention is that the label on the bottle or container, as to the curative or remedial effect of the contents, is a misbranding within the meaning of the Statute, if in fact the prescription be ineffectual for the purpose indicated. This, it seems to me, is an

entire misconception of the term "misbranding" as used in the Act. The language: "the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular," must be read and interpreted, so as to have regard to its context, and is to be restrained by the subject-matter of the Act.

Having regard to the intendment of the whole Act, which is to protect the public health against adulterated, poisonous and deleterious foods, drugs, etc., the labeling or branding of the bottle or container, as to the quantity or composition of "the ingredients or substances contained therein which shall be false or misleading," by no possible construction can be extended to an inquiry as to whether or not the prescription be efficacious or worthless to effect the remedy claimed for it. Pretermittng any expression of opinion as to how far Congress may go in the direction claimed under this indictment, it is sufficient to say that this legislation, predicated of the Commerce clause of the Federal Constitution, it must be conceded, presses the power of the general government close to the confines of limitation.

In the debates in Congress, when this measure was under consideration, it was never sought to be justified except on the ground of protecting the public health, as it might be affected by Inter-State shipments of food, drugs, etc. At no time was it asserted, or pretended, that it was proposed to reach the matter of holding the manufacturers and vendors of prescriptive or patented medicines, multitudinous and multiform as they are, to criminal liability for mis-statements as to the curative or remedial effects of the prescription, which would necessarily depend upon the opinions of contending experts and the users of the nostrums.

As this is a criminal statute, creating a new offense, it must be strictly construed and applied. It must be restrained to its expressed, reasonable intendment; otherwise, the Courts, by mere construction, may extend its operation far beyond the legislative intent. If it had been the mind of Congress to make it an indictable offense for such manufacturers and vendors by their labels or brandings on bottles and packages to mislead the buyers as to the curative or healing properties of the drugs, as to the mere matter of commendation, apt words, both in the title and body of the Act, could, and should, have been easily employed to indicate such purpose, and not leave it to the Courts by strained construction to read it into the statute.

The motion to quash is sustained.

After the rendering of said judgment, proceedings were instituted on behalf of the United States for a Writ of Error to the Supreme Court of the United States for the purpose of having the above judgment reviewed.

This notice is given pursuant to Section 4 of the Food and Drugs Act of June 30, 1906.

Decisions of United States district courts and of United States circuit courts of appeal adverse to the Government will not be accepted as final until acquiescence shall have been published.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *March 30, 1910.*